

ROLAND P. MERKEL, P.S.C.

ATTORNEY AT LAW AND MEDIATOR

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December 1, 2003

Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40602-0615

DEC 3 2003  
11:00 AM  
RECEIVED

**Re: Charles T. Latko, Jr. And Lois G. Latko v Taylor County RECC**  
**Case No. 2003-00395**

Dear Folks:

Respectfully I request the enclosed ***Response of the Complainants*** be filed and considered in the above matter. Thank you.

Very truly yours,



Roland P. Merkel  
enclosure

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Reply to:

- ☐ 332 Capitol Avenue, Frankfort, KY 40601 502/227-1123  
☒ 2333 Alexandria Drive, Lexington, KY 40504 859/263-1123

DEC 2 1988

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION  
CASE NO. 2003-00395**

**IN RE THE MATTER OF:**

**CHARLES T. LATKO, JR. and  
LOIS G. LATKO**

**COMPLAINANTS**

**v.**

**TAYLOR COUNTY RURAL ELECTRIC  
COOPERATIVE CORPORATION**

**RESPONDENT**

**RESPONSE OF THE COMPLAINANTS**

Come now the Complainants, by counsel, and for their Response to the Answer of the Respondent, states as follows:

1. **"All such installations" on the subject property had not, according to the Complainants, "existed in its present state since March 1983".**

A. The Latkos purchased their property in 1988. From and after that time 4 new residences within one block of their property had been erected and serviced by electric and telephone lines, and cable television service came into being for this area. This added several new lines to the service.

B. There existed no guy wires across the Latko property until after they purchased the land.

2. **Re: Field Visit Report of John Land: March 6, 2003**

A. My clients advise that when the subject "creek pole" was relocated 6 feet back from the edge of the creek in 1983, it was within the easement on the Sam Cox property, leaving ample room within the same easement to relocate the pole again. No additional land

need be burdened with a “new” easement in order to move the pole away from the creek.

B. The Latkos believe the shortest distance from the “creek pole” to the roadway is 45 feet, while the lines run “perpendicular” across the Cox property to the next pole a distance of about 75 feet; that the burden of the current easement would be no greater on the Cox property, and in fact, such would be lessened, by moving the “creek pole” away from the creek, toward the roadway, thereby shortening the span of the use of the Cox property.

C. When Respondent stated “The other three options of relocating the pole away from the creek were not possible at this time. This was due to the landowner, Mr. Sam Cox, refusing to give this utility an easement in an effort to relocate this pole”, such statement completely ignores the fact that Taylor County RECC, for the public good, may exercise its authority of Eminent Domain, particularly under KRS 416.130 and 416.140. To state they cannot obtain an easement due to a landowner’s failure to cooperate, misrepresents the range of solutions available. If a new easement is the best solution (as three of the “options” seem to indicate) then it is in the public interest for Taylor County RECC to exercise Eminent Domain authority, despite the reluctance of Mr. Cox.

D. Although Mr. Land reported he saw no “imminent harm”, such statement was tempered by his also stating “But I cannot determine whether erosion of the creek bank where this pole is located has progressed over time or has occurred more recently due to additional flow in this stream during inclement weather. As this creek bank continues to erode this pole will become unstable in the present location.”

Mr. Land appears to agree: (1) the creek bank has undergone erosion, (2) will continue to undergo erosion, and (3) the pole will at some point have to be moved. The

question remains: Why wait for potential disaster and harm to individuals? The pole should be moved now.

Attached hereto as Exhibit 1 is a letter from Lois Latko to then Judge Waddle, dated July 15, 1998, evidencing the reported amount of erosion that occurred in a short 2-year time span.

**3. Re: The Investigation by Crystal Davis: February 21, 2003**

Ms. Davis inspected for environmental violations, in particular, matters pertaining to water quality. She made inspection for matters that were within the specific jurisdiction of the Natural Resources and Environmental Protection Cabinet. Her findings in no way pertain to the electrical or safety hazards posed by the current situation.

While she gave her general comments, Ms. Davis did not check off any of the boxes on her form to indicate whether or not violations were observed.

The letter of Sara Gold Sproles (February 24, 2003) states "...no water quality violations were noted." She also confirmed the present existence of a continuing process of erosion: "The area below the county bridge appears to be eroding."

**4. The Distance Between the "Creek Pole" and the Creek**

The Latkos report that on November 19, 2003 they measured the distance between the "creek pole" and the edge of the creek as 38 inches. Compare this to the March 27, 2003 email from Mike Skaggs to John Land, where Mr. Skaggs reported the distance at that time to be "approximately 4' ".

**5. Additional Problems**

The Latkos report that additional electrical power surge problems affecting their property were manifested on August 4, August 22, and September 22, 2003, damaging 2 previously replaced

electric appliances.

Respectfully submitted,



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Roland P. Merkel  
Roland P. Merkel, P.S.C.  
2333 Alexandria Drive  
Lexington, KY 40504  
(859) 263-1123  
Attorney for Complainants

CERTIFICATE OF SERVICE

I certify a true copy of the above and foregoing was mailed, proper postage prepaid, on December 2, 2003 to:

Hon. Robert Spragens, Jr.  
Spragens, Smith & Higden, P.S.C.  
15 Court Square  
P. O. Box 681  
Lebanon, KY 40033



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Roland P. Merkel

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REB  
H.

EXHIBIT  
1  
ALL-STATE LEGAL SUPPLY CO.

July 15, 98

Judge J Waddell.  
Head of Disaster Serv  
203 W Court St. Suite #4  
Campbellsville, Ky 40118

7/17/98  
Memo - Judge Waddell called  
he turned all information  
over to (Tom Engineer)  
Peter Wolf  
Dist #4 Hwy engineer  
634 E. Olive Hwy P.O. Box  
E. Todd, Ky 42701

Mr. & Mrs. Charles Latko  
1000 S. Oldham Rd, Mannsville  
Campbellsville, Ky 40118  
Request for Flood disaster  
help

The enclosed information is being sent to you  
so that we can be assessed by Geo. Wilson  
and an application can be made to FEMA  
for flood disaster help and to "Mitigate  
from future flood damage" by receiving  
protective measures from continuous flooding  
and erosion of our property.

Extent of erosion: REB4

→ In the past 2 yrs the volume of water and  
strong undertow coming through the road tile  
(culvert) along side of our house has washed  
away 10 ft of our bank for a distance of 30 ft  
along our property and has broken up a concrete  
block wall which we had begun to build in  
order to stop further erosion along the creek  
bank. We have replaced the creek bank

②

with many tons of creek rock, boulders and concrete chunks - all of which continuously wash away with each rain. And each storm causes more flood damage which we can no longer afford to repair on our Social Security income.

We desperately need a bulkhead along our house and at the opening of this culvert; or divert the volume of water before it reaches our property. This volume of water originates from the ridge top of Spurlington Road (Hwy #44). By the time it gets to the bottom of the hill, where I am located on <sup>Hwy #</sup>337 (Bradfordville Rd) it has the speed and dangerous underflow of "White-water" in the smallest of rain storms. This water flushes across our back and side yard not only because of this flooding condition, but also because the Highway #337 across the front of our property tilts down into our yard allowing all Highway water to dump into our property.

I have enclosed Photos of the rainwater making

- ① ③ Crested waves as it passes through the road tile alongside my home and of the washed away bank which is now only 20 ft from my house.

It is imperative that we get help before our home becomes further endangered.

I have received some help in the past from the State Hwy Dept within their right-of-way but this damage is now far beyond their help.

Will you please schedule George Wilson to assess and present our case to FEMA or any other government agency who may be able to help us.

Thank you sincerely

Lois Locko  
(502) 465-19070